IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10186 of 1996
with
SPECIAL CIVIL APPLICATION No 329 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INDUSTRIAL CO.OP BANK LTD.

Versus

CHANDRAKANT P BUDHBHATTI

Appearance:

1. Special Civil Application No. 10186 of 1996

MR DIPAK R DAVE for Petitioner No. 1

MR HJ NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 21/12/2004

COMMON ORAL JUDGEMENT

1. Both these petitions are arising from the same award and order of the learned Presiding Officer, Labour

Court, Junagadh in Reference (LCJ) No.676 of 1990. The Labour Court has, by the impugned award, awarded a sum of Rs.75,000/- instead of reinstatement and backwages to the workman. Since these are cross petitions arising from the same award between the employer and the workman they are described herein as such.

2. According to the impugned award, a reference of the industrial dispute between employer and the workman was referred and the issue was whether the workman should be reinstated to his original post with full backwages. The industrial dispute was referred by the Assistant Commissioner of Labour, Porbandar under the State Government and as per the award the workman was working with the employer-bank as a Clerk from 1.9.1973 to 24.4.1976 on daily wages of Rs.6/-. The termination of his service from that date was held to be in violation of Section 25F of the Industrial Disputes Act, 1947 for which the industrial dispute appears to have been referred on 15.5.1986 and the award appears to have been made on 2.7.1996.

3. Learned counsel Mr DR Dave, relying upon the Division Bench judgment of this Court in PK Shah vs. Gujarat Industrial Cooperative Bank Ltd., 2001 (1) GLR 108 submitted that in the case of the present employer itself this Court has held that the dispute between the bank and its workmen could not have been referred for adjudication by the State Government and the reference itself was illegal and incompetent. The award passed on an incompetent reference was also a nullity and, therefore, such award was liable to be set aside.

4. There was no dispute about the same employer-bank being a party in both the proceedings and about the fact that the aforesaid judgment squarely applies in the facts of the present case.

5. Under such circumstances, learned advocate Mr HJ Nanavati appearing for the workman submitted that liberty of the workman to raise an industrial dispute before the appropriate forum may be reserved, without entering into the other contentions.

6. Accordingly, Special Civil Application No.10186 of 1996 of the employer-bank is allowed and the impugned award and order of the Labour Court, Junagadh in Reference (LCJ) No.676 of 1990 is set aside. Rule in that petition is made absolute. Special Civil Application No.329 of 1997 made with a prayer to grant reinstatement with full backwages does not survive and

accordingly stands dismissed. Rule therein is discharged.

In the facts and circumstances of the case, there is no order as to costs.

It is clarified that it will be open for the workman to seek reference of the industrial dispute raised by him in the year 1986 about his reinstatement through appropriate authority under the Industrial Disputes Act, 1947.

(D.H. WAGHELA,J.)
zgs/-